



Iowa Department of Administrative Services  
Human Resources Program Delivery Services ■ Labor Relations Bureau

**LABOR RELATIONS INFORMATION AND NEWS**  
**September 2007**

*"Work is either fun or drudgery. It depends on your attitude. I like fun."*

~ Colleen C. Barrett, President & Corporate Secretary, Southwest Airlines Co.

**Employment Law Updates**

**EEO:**

- On August 10, 2007, the U.S. Equal Employment Opportunity Commission (EEOC) issued a study examining Alternative Dispute Resolution (ADR) programs used by federal agencies to resolve job disputes. The report addresses types of ADR techniques, sources of third party neutrals, and types of settlement benefits in the pre-complaint and formal complaint stages of the federal sector process. For a copy of the report, go to:  
[www.eeoc.gov/federal/adr/adr\\_report\\_2006/index.html](http://www.eeoc.gov/federal/adr/adr_report_2006/index.html)
- In 2007, the EEOC modified the EEO-1 report, dividing the job category of "Officials and Managers" and revising race/ethnic categories. For a discussion on the new reporting system, go to:  
[www.vedderprice.com/docs/pub/27f273e9-749a-40f9-8938-ae7e2e7f223b\\_document.pdf](http://www.vedderprice.com/docs/pub/27f273e9-749a-40f9-8938-ae7e2e7f223b_document.pdf)
- On August 23, 2007, the EEOC announced that a medical clinic in California agreed to pay \$44,000 to a former clerk whose supervisor harassed her with offensive and racial code words. This case reflects a more subtle form of racial discrimination, and highlights the need for employers to take such incidents seriously. For the full news story, go to:  
[www.thelgnews.com/article/2007-8-24-lg-settlement](http://www.thelgnews.com/article/2007-8-24-lg-settlement)

**FMLA:**

The U.S. Court of Appeals for the Seventh Circuit recently held that the FMLA does not require an employer to pay an employee his or her normal salary when that employee has a medical condition and has chosen to perform light duty work under a workers' compensation plan. *Hendricks v. Compass Group, USA, Inc.*, No. 06-3637 (August 6, 2007). For a copy of the decision, go to:

[www.ca7.uscourts.gov/fdocs/docs.fwx?submit=rss\\_sho&shofile=06-3637\\_011.pdf](http://www.ca7.uscourts.gov/fdocs/docs.fwx?submit=rss_sho&shofile=06-3637_011.pdf)

**Title VII:**

- On July 31, 2007, the U.S. House of Representatives passed the *Lilly Ledbetter Fair Pay Act* (H.R. 2831), a bill designed to overturn the Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, No. 05-1074 (May 29, 2007), which held that pay discrimination charges under Title VII of the Civil Rights Act must be filed within 180 days after the initial discriminatory pay decision takes place. The *Fair Pay Act* clarifies that an employee has 180 days to file a pay discrimination claim after each discriminatorily low paycheck. On July 20, the Senate introduced similar legislation, the *Fair Pay Restoration Act* (S. 1843), which is expected to be voted on in upcoming weeks. For a copy of the Supreme Court's decision, go to:  
[www.supremecourtus.gov/opinions/06pdf/05-1074.pdf](http://www.supremecourtus.gov/opinions/06pdf/05-1074.pdf)  
For a copy of the *Lilly Ledbetter Fair Pay Act*, go to:  
[frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h2831rh.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h2831rh.txt.pdf)  
For a copy of the proposed *Fair Pay Restoration Act*, go to:  
[frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:s1843is.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1843is.txt.pdf)
- Despite evidence that her employer made a comment discouraging her from getting pregnant, the U.S. Court of Appeals for the Eighth Circuit decided against a pregnant employee, finding the employee not protected by the Pregnancy Discrimination Act of Title VII, and upheld her termination. *Fjelsta v. Zogg Dermatology*, No. 06-1965 (May 29, 2007). For a copy of the decision, go to:  
[www.ca8.uscourts.gov/opndir/07/05/061965P.pdf](http://www.ca8.uscourts.gov/opndir/07/05/061965P.pdf)

**National Drug-Free Work Week: October 14–20, 2007**

The Department of Labor and its Drug-Free Workplace Alliance have collaborated for the purpose of this annual campaign in an effort to educate employers, employees, and the public about the importance of being drug-free as an essential component of a safe and healthful workplace. To learn more about ways to promote drug-free workplace messages, go to: [www.dol.gov/workingpartners](http://www.dol.gov/workingpartners)

## Employment Law Trends Throughout the U.S.

### Illinois, Indiana, Maine, Minnesota, Nebraska, New York:

Several states have passed Family Military Leave Acts which provide soldiers' family members limited unpaid leave during periods leading up to or immediately following a family member's deployment, and during periods of leave while still on active duty. For a description of each state's statute, go to:

[www.jacksonlewis.com/legalupdates/article.cfm?aid=1168](http://www.jacksonlewis.com/legalupdates/article.cfm?aid=1168)

### Illinois, New York, Oregon:

On August 22, 2007, New York passed the *Nursing Mothers in the Workplace Act*, requiring employers to provide unpaid breaks for women to express milk or nurse their children for up to three years after a child's birth, and to make a reasonable effort to provide private space for nursing or producing milk. The law also prohibits employers from discriminating against a nursing employee. Oregon passed a similar law (H.B. 2372) in May; Illinois' *Nursing Mothers in the Workplace Act* has been in effect since 2001; and several other states are pushing for similar legislation. For a copy of Illinois' law, go to:

[www.ilga.gov/legislation/publicacts/pubact92/acts/92-0068.html](http://www.ilga.gov/legislation/publicacts/pubact92/acts/92-0068.html)

For a copy of Oregon's law, go to:

[www.leg.state.or.us/07reg/measpdf/hb2300.dir/hb2372.en.pdf](http://www.leg.state.or.us/07reg/measpdf/hb2300.dir/hb2372.en.pdf)

### Sample GRIP Case:

The following case, recently heard at GRIP, is a good example of the use of progressive discipline:

*A technician responsible for tool control at a State correctional institution was given a 3-day suspension without pay after a screwdriver was found unsecured following his shift. The employee did not dispute that the screwdriver was unsecured and unaccounted for; however, the Union argued that the level of discipline was excessive. The employee had received a 1-day suspension just 3 months earlier for a similar infraction.*

The 3-day suspension letter was well-written, with a clear explanation of the incident, the agency and DOC rules that were violated, and a reference to the prior suspension. Management's exhibits included the missing tool report, documents showing the employee on shift on the day in question, and performance evaluations showing the employee had been notified of the need to improve his performance with respect to tool control/inventory.

The GRIP Panel denied the grievance.

### Are you a **leadership pyromaniac**?

Patricia B. Gray, a writer with *Fortune Small Business Magazine*, writes, "Pyros are bosses who compulsively light one fire after another in their organizations. These constant emergencies are highly destructive."

Gray provides the following quiz to help you determine if you are a pyro:

*Are most of your email messages labeled "urgent"?*

*Have you ever left more than 3 voice mail messages on the same issue in 1 hour for an underling?*

*Do you make your employees stay late or work weekends on issues that came up just before they were about to leave for the day?*

*Do you suspect your employees are screening their calls to avoid yours or are sending them to voice mail?*

Any "yes" answers to those questions could indicate you're a leadership pyromaniac.

[http://money.cnn.com/magazines/fsb/fsb\\_archive/2007/07/01/100123041/index.htm](http://money.cnn.com/magazines/fsb/fsb_archive/2007/07/01/100123041/index.htm)

### ***Should I be drug testing my employees?***

Drug and alcohol testing is prohibited, except for those departments where there is Code allowing it. Under 730.5 of the Iowa Code, neither the State, nor any political subdivision of the State, has the authority to perform drug and alcohol testing of its employees. DAS Administrative Rule 54.7(8A) further prohibits testing. If you suspect an employee of being under the influence of drugs or alcohol in the workplace, you should document your observations and may need to initiate an investigation right away. If the employee is required to have a commercial drivers' license (CDL) for his/her job, you may need to send the employee to an appropriate drug testing site. In any circumstance, you are encouraged to **contact the Personnel Officer assigned to your agency for further guidance.**

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**[das.iowa.gov/newsletters/index.html](http://das.iowa.gov/newsletters/index.html)**  
**and click on the link for Labor Relations Information and News.**

**For questions, or to provide suggestions for items/topics to be included in upcoming issues of this newsletter, please contact:**

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